

Message Text

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ACTION IO-14

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TO SECSTATE WASHDC 9589

C O N F I D E N T I A L SECTION 1 OF 2 USUN 0535

FOR ASSISTANT SECRETARIES MAYNES AND HANSELL

E.O. 11652: GDS
TAG: PORG, UNGA, AQ, VQ, GQ
SUBJECT: COMMITTEE OF 24 (C-24): US NON-SELF-
GOVERNING TERRITORIES

REF: STATE 023852

SUMMARY: USUN BELIEVES THAT IT WILL NOT BE POSSIBLE TO
ACHIEVE UN AGREEMENT TO OR ACQUIESCENCE IN A FINDING THAT GUAM AND
THE VIRGIN ISLANDS ARE NO LONGER NON-SELF-GOVERNING UNDER THE UN
CHARTER FOLLOWING THE INSTALLATION OF GOVERNMENTS UNDER LOCALLY
DRAFTED CONSTITUTIONS UNDER PRESENT CIRCUMSTANCES. NEITHER
THE PEOPLE OF GUAM NOR THE VIRGIN ISLANDS WILL HAVE HAD
THE OPPORTUNITY TO EXPRESS THEIR VIEWS ON OTHER STATUS
ALTERNATIVES (INFORMAL GUAM STATUS REFERENDUM NOTWITH-
STANDING) AND BOTH WILL SUFFER FROM SIGNIFICANT
INEQUALITIES IN THE LACK OF (1) VOTING CONGRESSIONAL
REPRESENTATION AND (2) THE PRESIDENTIAL VOTE SUCH INEQUALITIES ARE
INCONSISTENT WITH THE
PRINCIPLES OF INTEGRATION CONTAINED IN GA RESOLUTION
1541 (V). A DECISION TO TERMINATE REPORTING COULD BE
REGARDED AS INCONSISTENT WITH OUR LEGAL OBLIGATIONS UNDER
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THE CHARTER AND COULD BE REFERRED TO THE ICJ WHERE
WE WOULD EXPECT AN OPINION ADVERSE TO OUR CONTENTION OF
FULL SELF-GOVERNMENT. IF IT IS NOT POSSIBLE TO OFFER
OTHER STATUS OPTIONS AT THE TIME OF THE REFERENDUM, AT
A MINIMUM WE SHOULD INVITE UN OBSERVATION OF IT AS A WAY TO LAY
THE GROUND WORK FOR EVENTUAL REMOVAL FROM THE LIST OF NON-
SELF-GOVERNING TERRITORIES. A US

COMMITMENT TO WORK FOR CONGRESSIONAL REPRESENTATION AND THE PRESIDENTIAL VOTE FOR GUAM AND THE VIRGIN ISLANDS WOULD ALSO HELP TO REBUT EXPECTED CRITICISM. END SUMMARY.

1. PARA 6 OF REFTTEL NOTES THAT THE DEPARTMENT HAS INFORMED INTERIOR THAT IT IS OUR INTENTION TO MAKE A FINDING THAT GUAM AND THE VIRGIN ISLANDS ARE NO LONGER NON-SELF-GOVERNING TERRITORIES FOLLOWING THE INSTALLATION OF GOVERNMENTS UNDER LOCALLY DRAFTED CONSTITUTIONS AND REQUESTS USUN'S VIEWS ON THE TIMING OF THE ANNOUNCEMENT AND ON ITS POSSIBLE EFFECT ON C-24 CONSIDERATION OF PUERTO RICO. USUN BELIEVES THAT UN AGREEMENT TO OR ACQUIESCENCE IN SUCH A FINDING WILL NOT BE POSSIBLE TO ACHIEVE UNDER CURRENT CIRCUMSTANCES.

2. FIRST, THE PEOPLE OF GUAM AND THE VIRGIN ISLANDS WILL NOT HAVE HAD ANY OPPORTUNITY TO EXPRESS THEIR VIEWS ON OTHER STATUS ALTERNATIVES. (THE VALIDITY OF THE GUAM INFORMAL STATUS REFERENDUM IS SUSPECT BECAUSE OF THE LACK OF AN ADEQUATE CAMPAIGN AND THE LOW VOTER TURNOUT.) THE CONSTITUTIONAL ENABLING LEGISLATION, PL 94-584, SPECIFICALLY REQUIRES THAT THE GUAM AND VIRGIN ISLANDS CONSTITUTIONS "RECOGNIZE, AND BE CONSISTENT WITH, THE SOVEREIGNTY OF THE US".

ALTHOUGH IT CAN BE ARGUED THAT THERE IS NO APPRECIABLE INTEREST IN ANY OTHER STATUS AND THAT THE PREAMBLE OF THE GUAM CONSTITUTION AS WELL AS OTHER SECTIONS MAKES THE RELATIONSHIP WITH THE US EXPLICIT, THE LACK OF AN OPPORTUNITY TO EXPRESS A CHOICE FOR SOME OTHER STATUS WILL BE A FATAL FLAW FOR MANY UN DELEGATIONS. FOR THE MAJORITY
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OF UN MEMBERS AND, IN PARTICULAR, FOR THE MEMBERS OF THE C-24, THE CHARTER-BASED RIGHTS AND THIRTY YEARS EXPERIENCE UNDER THE CHARTER CALL FOR "SELF-DETERMINATION AND INDEPENDENCE". THAT IS NOT TO SAY THAT STATUSES OTHER THAN INDEPENDENCE HAVE NOT BEEN APPROVED BUT THE EXAMPLES ARE RELATIVELY FEW AND THE NUMBER OF CASES OF INTEGRATION WITH AN INDEPENDENT STATE, EVEN FEWER.

3. A SECOND MAJOR DIFFICULTY WILL BE WITH THE INEQUALITIES FROM WHICH GUAM AND THE VIRGIN ISLANDS WILL SUFFER, I.E., THE LACK OF CONGRESSIONAL REPRESENTATION AND THE PRESIDENTIAL VOTE. ALTHOUGH THERE ARE OTHER CASES OF NON-SELF-GOVERNING TERRITORIES CHOOSING "INTEGRATION" WITH AN INDEPENDENT STATE (INTER ALIA HAWAII, ALASKA, GREENLAND), THE ONLY CASES WHERE THEY DID SO UNDER CONDITIONS OF LESS-THAN-TOTAL EQUALITY WERE IN THE VERY EARLY DAYS OF THE UN WHEN THE SUPPORT ENJOYED BY THE WEST WAS MUCH GREATER AND CONCEPTUALIZATION OF THE RIGHT OF SELF-DETERMINATION FAR LESS DEVELOPED. (NEW CALEDONIA, THE FRENCH SETTLEMENTS OF OCEANIA, AND ST. PIERRE ET MIQUELON IN 1947 ARE EXAMPLES.) PRINCIPLE VIII OF GA RESOLUTION 1541 OF DECEMBER 1960 SPECIFIES, INTER ALIA, THAT THE INDEPENDENT STATE AND THE ERSTWHILE NON-SELF-GOVERNING TERRITORY

"SHOULD HAVE EQUAL RIGHTS AND OPPORTUNITIES FOR REPRESENTATION AND EFFECTIVE PARTICIPATION AT ALL LEVELS IN THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL ORGANS OF GOVERNMENT". WHILE 1541 DOES NOT ENJOY THE QUASI-CONSTITUTIONAL STATUS OF ITS MORE FAMOUS COMPANION, 1514, IT IS PROBABLE THAT THOSE ADVOCATES OF INDEPENDENCE WHO MIGHT BE WILLING TO AGREE TO A STATUS OF LESS THAN INDEPENDENCE WOULD, AT A MINIMUM, EXPECT ADHERENCE TO THE PRINCIPLES OF 1541, BY THE UNITED STATES IN VIEW OF THE FIRST MODERN ENUNCIATION OF THE RIGHT OF SELF-DETERMINATION BY PRESIDENT WILSON. MOREOVER, THE US IS ON RECORD AS HAVING SUPPORTED THE 1541 SET OF PRINCIPLES; WE ABSTAINED, AS US SPOKESMAN ALCY TOLD THE FOURTH COMMITTEE, ONLY BECAUSE OF THE LAST-MINUTE ADOPTION OF A TOGO/TUNISIAN AMENDMENT IN

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THE FOURTH COMMITTEE NOT HERE RELEVANT.

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C O N F I D E N T I A L SECTION 2 OF 2 USUN 0535

FOR ASSISTANT SECRETARIES MAYNES AND HANSELL

4. MOREOVER, OUR TRADITIONAL VIEW THAT IT IS FOR THE ADMINISTERING POWER TO DETERMINE AUTHORITATIVELY WHEN SELF-GOVERNMENT HAS BEEN ATTAINED BY A NON-SELF-GOVERNING TERRITORY UNDER ITS ADMINISTRATION IS SHARED BY A VERY SELECT GROUP OF FELLOW ADMINISTERING POWERS; AT THE LAST COUNT ONLY THE FOLLOWING STOOD WITH US ON THE ISSUE: THE

UK, FRANCE, AND GUATEMALA.

5. WHAT WE ARE CONCERNED ABOUT IS THAT A US DECISION TO TERMINATE REPORTING ON GUAM AND THE VIRGIN ISLANDS WOULD BE REGARDED BY THE LARGE MAJORITY OF THE UN AND THE C-24 AS INCONSISTENT WITH OUR LEGAL OBLIGATIONS UNDER ARTICLE 73E OF THE UN CHARTER. ACTIVITIES IN THE GENERAL ASSEMBLY, OF WHICH THERE ARE MANY, MAY PROPOSE THAT THE INTERNATIONAL COURT OF JUSTICE BE ASKED TO GIVE AN ADVISORY OPINION ON THE QUESTION. WE COULD NOT PREVENT A MAJORITY FROM COALESCING IN SUPPORT OF SUCH A REQUEST, AND IT WOULD BE INCONSISTENT WITH US SUPPORT FOR THE COURT AND THE RULE OF LAW TO TRY TO OPPOSE IT. GIVEN THE RECENT JURISPRUDENCE OF THE ICJ IN THE WESTERN SHARA AND NAMIBIA PROCEEDINGS, IT WOULD BE CIRCUMSPECT TO EXPECT THE COURT TO DELIVER AN OPINION ADVERSE TO OUR CONTENTION

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THAT A SUFFICIENT DEGREE OF SELF-GOVERNMENT HAD BEEN ACHIEVED TO BRING TO AN END THE ARTICLE 73E REPORTING OBLIGATION AND THE GA/C-24 ASSERTING OF COMPETENCE, THE ADMINISTRATION WOULD THEN BE CONFRONTED WITH AN UNTENABLE SITUATION IN WHICH WE APPEARED TO BE LAW-BREAKERS AND CONTEMPTUOUS OF OUR INTERNATIONAL LEGAL OBLIGATIONS. THIS COULD PRESENT A PROBLEM OF THE CHARACTER OF THE BYRD AMENDMENT.

6. RECOMMENDATIONS, THE WAY TO MAXIMIZE OUR CHANCES OF SUCCESS WOULD BE TO HOLD A UN-OBSERVED CONSTITUTIONAL REFERENDUM IN WHICH OTHER STATUS OPTIONS ARE ALSO OFFERED. WE RECOGNIZE THAT THE ENABLING LEGISLATION SPECIFICALLY EXCLUDES SUCH A POSSIBILITY AND SEE THE DIFFICULTIES IN SEEKING TO PERSUADE THE CONGRESS TO BORADEN ITS MANDATE. THE NEXT BEST ALTERNATIVE WOULD BE TO INVITE UN OBSERVATION OF THE CONSTITUTION REFERENDUM ITSELF. THERE IS SOME HOPE THAT AN EXEMPLARY UN-OBSERVED REFERENDUM, PROCEEDED BY THE NECESSARY EDUCATION PROGRAM, RESULTING IN OVERWHELMING POPULAR APPROVAL OF THE CONSTITUTION WOULD SERVE TO REBUT MUCH TO THE EXPECTED CRITICISM. A COMMITMENT BY THE USG TO WORK FOR CONGRESSIONAL REPRESENTATION AND THE PRESIDENTIAL VOTE FOR THE PEOPLE OF GUAM AND THE VIRGIN ISLANDS WOULD ALSO HELP. WE WOULD DERIVE TACTICAL ADVANTAGES FROM EARLY ANNOUNCEMENT OF A DECISION TO INVITE UN OBSERVATION OF THE CONSTITUTIONAL REFERENDUM.

7. BY INVITING UN-OBSERVATION OF EACH CONSTITUTIONAL REFERENDUM, WE COULD LAY THE GROUNDWORK FOR EVENTUAL REMOVAL OF THE THREE UNINCORPORATED TERRITORIES FROM THE LIST OF NON-SELF-GOVERNING TERRITORIES. THE QUESTION REMAINS:

HOW DO WE GET THE THREE US NON-SELF-GOVERNING
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TERRITORIES OFF THE LIST? IN ADDITION TO THE MODALITIES
ALREADY DISCUSSED--INTEGRATION OF THE BASIS OF EQUALITY
OR AN UN-OBSERVED STATUS REFERENDUM WITH THE INDEPENDENCE
OPTION--A FURTHER POSSIBILITY WOULD BE REQUEST FROM
THE GOVERNMENT OF GUAM, ELECTED PURSUANT TO THE NEW CONSTITU-
TION, FOR REMOVAL FROM THE LIST. SUCH ACTION BY GUAM
FOLLOWING AN EXEMPLARY UN-OBSERVED CONSTITUTIONAL
REFERENDUM WITH OVERWHELMING APPROVAL OF CONSTITUTION
COULD SERVE AS THE BASIS FOR A US REQUEST THAT GUAM BE
REMOVED FROM THE LIST. THE US COULD THEN UNDERTAKE
DIPLOMATIC EFFORTS TO ATTAIN ACCEPTANCE OF THIS REQUEST.

8. EFFECT ON CONSIDERATION OF PUERTO RICO. THE GREATER
THE ACRIMONY AND RESISTANCE WHICH OUR DECISION ON GUAM
AND THE VIRGIN ISLANDS INVITES, THE GREATER THE PROBABILITY
THAT THE RESULT WILL NEGATIVELY AFFECT THE COMMITTEE'S
CONSIDERATION OF PUERTO RICO. ANY IMPRESSION THAT WE
ARE TRYING TO DO AN END RUN ON THE COMMITTEE WILL CLEARLY
REDOUND TO OUR DISCREDIT ON PUERTO RICO.

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